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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

HAI NGUYEN, Plaintiff and Appellant, v. JOHN G. CATALDO et al., Defendants and Respondents.	B302412, B303186 (Los Angeles County Super. Ct. No. BC635606)

APPEAL from a judgment and an order of the Superior Court of Los Angeles County, Holly J. Fujie, Judge. Affirmed in part, reversed in part.

Grebow & Rubin and Arthur Grebow for Plaintiff and Appellant Hai Nguyen.

Collins Muir + Stewart, Joshua A. Cohen and Christian E. Foy Nagy for Defendant and Respondent John G. Cataldo.

No appearance by Defendant and Respondent K&C Plus Coco, LLC.

In May 2016, defendant and respondent John G. Cataldo agreed to sell a commercial building in Gardena to defendant and respondent K&C Plus Coco, LLC (K&C). The building's tenant, plaintiff and appellant Hai Nguyen, objected. He believed his lease gave him a right of first refusal to purchase the property. After two months of negotiations among the parties, Cataldo elected to complete the sale of the property to K&C, and Nguyen sued for breach of contract, specific performance, and quiet title. The trial court granted summary judgment in favor of defendants, finding that Nguyen's right of first refusal expired when his lease ended in 2015, and that a handwritten document signed by Cataldo and Nguyen in June 2016 did not create a valid option contract for Nguyen to purchase the property. The court also awarded $275,657 in contractual attorney fees to Cataldo and K&C. Nguyen contends that these decisions were error. We agree with Nguyen as to the attorney fee award to K&C, which was not party to any contract with Nguyen. Otherwise, we affirm.

FACTS AND PROCEEDINGS BELOW

Because this is an appeal of a grant of summary judgment in favor of Cataldo and K&C, we describe the evidence "in the light most favorable to the opposing party," Nguyen. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).)

Nguyen agreed to lease a commercial building in Gardena from Cataldo from December 5, 2013 to December 31, 2015. The lease included a provision giving Nguyen "the option to purchase building at the end or during lease period. Price will be at market value. Tenant shall have the first right of refusal to purchase the building during the lease." In addition, the lease provided that "[i]n the event of litigation, the prevailing party

shall be awarded court costs and reasonable attorneys' fees." The lease contained no provisions referring to the rights or obligations of the parties after the lease term ended.

Nguyen claims that he signed the lease, but neither party has produced a signed copy of the document. Nevertheless, Nguyen occupied the building and paid the rent throughout the term of the lease. After the lease expired at the end of 2015, Nguyen continued to occupy the building and pay the rent, which Cataldo accepted.

Nguyen called Cataldo's assistant several times during the lease term to ask if he had decided to sell the property, and on each occasion, the assistant said no. On May 5, 2016, Nguyen noticed a "for sale" sign on the building. Nguyen called Cataldo and told him he wished to exercise his right of first refusal. According to Nguyen, Cataldo agreed to sell the building for $512,500, with $100,000 of the price payable over 20 months. Unbeknownst to Nguyen, the previous day Cataldo had signed an agreement to sell the property to another buyer, K&C.

On May 13, a real estate broker visited the property along with Davis Ku, a principal of K&C, and asked Nguyen to sign an estoppel certificate affirming that "All Tenant Purchase Options and Refusal Rights are expired." Nguyen called Cataldo to ask about the document, and Cataldo told Nguyen that he had received two superior bids, and that if Nguyen wished to exercise his right of first refusal, he would need to match the highest bid of $525,000. Nguyen agreed to the $525,000 price but told Cataldo that he needed some time to arrange financing. On May 19, Nguyen sent Cataldo an email stating that he was exercising his right of first refusal to purchase the building for $525,000. In a phone call the next day,

Cataldo told Nguyen that he had agreed to sell the building to another buyer. This was the first time Nguyen learned that Cataldo had agreed to sell to a different purchaser.

Over the next three weeks, the parties remained at an impasse. The sale of the property from Cataldo to K&C was in escrow, but the transaction could not close without a signature from Nguyen on the estoppel certificate, and Nguyen refused to sign. On May 25, Cataldo served Nguyen a 30-day notice to quit, requiring Nguyen to vacate the premises by July 1. On June 14, Nguyen and Cataldo met in an attempt to resolve the dispute. Cataldo wrote out a document by hand, and both parties signed it. Because this document is at the center of this case, we quote it in its entirety and without alteration:

"OPTIONS June 14, 2016

"1) Buy the building $525,000.00

- See good source of funds
- Due date for exercise to buy and show evidence of funds 7-7-16 (or before)
- Short escrow. Less than 1 mo or max 45 days

"2) Agree to enter into a 5 year lease w/ Davis

- Move to the front unit
- Discuss detail
- Fair rent

"3) Move out. 7-7-16 (Notify)"

(Capitalization omitted.)

The reference to a lease with "Davis" presumably refers to Davis Ku, a principal of K&C.

Nguyen texted Cataldo on July 6, 2016 and informed him that he wished to purchase the property. July 7 was

inconvenient for Cataldo, so he and Nguyen agreed to meet on July 8, 2016 for Nguyen to provide evidence of the funding. At the meeting on July 8, Nguyen gave Cataldo a letter signed by Mark Reynolds of Trimark Funding Inc. stating that "Hai D Nguyen been [*sic*] approved for 1,000,000 dollar line of credit to purchase investment property in California. We have based this on their credit history and income. Should you have any questions please feel free to call me at my number below."

Cataldo told Nguyen that he would send him a purchase agreement for the property, and that the escrow with the previous buyer had already been canceled. On July 13, Nguyen texted Cataldo to ask about the status of the purchase agreement, and Cataldo replied that he was "[w]aiting for cancelation agreement to be signed by [the p]revious buyer." On July 20, an attorney representing K&C sent Cataldo a letter refusing to cancel the transaction. The letter stated that Nguyen's right of first refusal had expired when the lease ended on December 31, 2015, and it was not a basis for voiding the transaction with K&C. If Cataldo did not agree to close escrow, K&C would sue him for specific performance and fraud. Cataldo forwarded the letter to Nguyen and refused to sell the property to him.

On September 29, 2016, Nguyen filed suit, alleging causes of action for breach of contract and specific performance against Cataldo, and quiet title against K&C. The complaint alleged that "[Nguyen] and . . . Cataldo had a contract that was partially written in the Lease Agreement and the June 14 Memo, partially memorialized in text messages, partially oral, and partially implied in the conduct of the parties." Cataldo filed a motion for summary judgment on all causes of action, including

Nguyen's claim for quiet title against K&C. The trial court granted the motion. The court found that Nguyen's right of first refusal expired when the lease ended on December 31, 2015, that the June 14 memo was not an option contract, and that even if it were, Nguyen failed to comply with the terms of the option. The court rejected the quiet title claim against K&C as derivative of the claims against Cataldo. Cataldo and K&C filed motions for contractual attorney fees (see Civ. Code, § 1717), citing the attorney fee provisions in the lease. The trial court granted the motions and awarded Cataldo $178,378.50 and K&C $97,278.50 in attorney fees.

DISCUSSION

A. *Summary Judgment*

Nguyen contends that there is a triable issue of material fact as to whether a valid contract existed between himself and Cataldo for the purchase of the property, and that the trial court therefore erred by granting summary judgment in favor of Cataldo and K&C. We disagree. As Nguyen effectively concedes on appeal, his right of first refusal expired when the lease ended in 2015. Furthermore, the June 14 memo did not give Nguyen an option to purchase the property.

Summary judgment is proper when there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (*Nealy v. City of Santa Monica* (2015) 234 Cal.App.4th 359, 370; *Aguilar*, *supra*, 25 Cal.4th at p. 843; Code Civ. Proc., § 437c, subd. (c).) A defendant moving for summary judgment bears an initial burden of showing that one or more elements of the plaintiff's cause of action cannot be established or that there is a complete defense to that cause of

action. (*Nealy v. City of Santa Monica*, *supra*, at p. 370; *Aguilar*, *supra*, 25 Cal.4th at p. 849.) If the defendant meets this burden, the plaintiff has the burden to demonstrate one or more triable issues of material fact as to the cause of action or defense. (*Aguilar*, *supra*, at p. 849.) A triable issue of material fact exists "if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Id.* at p. 850.)

In reviewing summary judgment, "[w]e review the trial court's decision de novo, liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in favor of that party." (*State of California v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1017–1018.)

In his complaint and in his opposition to Cataldo's motion for summary judgment, Nguyen contended that the 2013 lease agreement gave him a right of first refusal to purchase the property. Although the lease expired at the end of 2015, Nguyen claimed that because he continued to pay rent on the property, the right of first refusal remained in effect when he attempted to exercise it in May 2016. The trial court correctly rejected this argument. When "a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly." (Civ. Code, § 1945; accord, *Schmitt v. Felix* (1958) 157 Cal.App.2d 642, 647.) During this holdover period after the lease expires, however, only "the 'essential' terms of [the] lease" remain in effect. (*Smyth v. Berman* (2019) 31 Cal.App.5th 183, 192 (*Smyth*), quoting

Spaulding v. Yovino-Young (1947) 30 Cal.2d 138, 141.) These essential terms include the amount and time of the payment of rent, but they do not include additional provisions such as a right of first refusal or an option to purchase. (*Smyth*, *supra*, at pp. 192–193.) "Of course, the parties to a lease certainly have the power to rebut the general presumption that a right of first refusal does not carry forward into a holdover tenancy by expressing a contrary intent" (*id.* at p. 193), but the lease agreement between Nguyen and Cataldo specifies that Nguyen "shall have the first right of refusal to purchase the building *during the lease*" (italics added), with no indication that the right would continue into a holdover period.

In his appellate briefs, Nguyen does not challenge the trial court's ruling regarding the right of first refusal based on the expired lease, and he thus effectively concedes the point. Instead, Nguyen argues that there is a triable issue of material fact as to whether he validly exercised a right to purchase the property under the June 14 memo. We disagree.

Our first task it to determine the definition of the word "options" as used by the parties in the heading of the June 14 memo. (Capitalization omitted.) Because the word option has multiple meanings, we must consider the entire memo and the undisputed circumstances to determine which definition best applies.

In legal parlance, the term option usually means an offer that becomes a binding contract when the offeree accepts the offer.[1] (*Steiner, supra,* 48 Cal.4th at p. 420.) But it also

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[1] If the optionee gives consideration, an option contract is formed and the optionor's offer is irrevocable. (*Steiner v. Thexton*

means an "alternative course of action." (Merriam-Webster Dict. (2020) <https://www.merriam-webster.com/dictionary/option> [as of November 17, 2020] ["option" definition 3.a.].) Here, in order to give the same meaning to the term "options" to each of the choices expressed in the three different scenarios listed below that heading, the definition that best conforms to that goal is "alternative course of action," and not an offer to purchase. Further, considering the circumstances under which the memo was created, it makes sense that the first scenario was not meant to be an offer by Cataldo to sell the building to Nguyen, when both parties were aware that the sale to K&C had not yet been canceled.

Although the first scenario could be interpreted as an offer if it was the only circumstance described in the memo, the two other scenarios are not offers but are "alternative courses of action." Thus, the second scenario contemplated that Nguyen would "[a]gree to enter into a 5[-]year lease" with K&C for "[f]air rent." But this was not an offer from Cataldo to Nguyen. Instead it was one of the choices possibly available to Nguyen if he did not buy the property. Likewise, the memo's third scenario was not an offer from Cataldo to Nguyen either. Rather it called for Nguyen to "[m]ove out" of the building.

Because we must avoid an interpretation where the same word in one document has different meanings (*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2003) 107 Cal.App.4th 516, 526), we conclude that the more fitting definition of "options" as

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(2010) 48 Cal.4th 411, 420 (*Steiner*).) This distinction is not relevant to this case, however, because the June 14 memo is not an option as defined in *Steiner* regardless of whether or not Nguyen gave consideration.

used in the memo is alternative courses of action. (Capitalization omitted.)

Further, our interpretation not only gives the same meaning to the word "options" as it applied to each scenario, it is the one that most fits the circumstances facing the parties. At the time they composed the June 14 memo they were both aware that Cataldo had already contracted to sell the property to K&C. Although Cataldo told Nguyen he would cancel the escrow with K&C, they could not then know if K&C would agree. (Indeed, K&C refused.) Not knowing what K&C would do, it made sense to set out three alternatives, one of which might come to pass depending on what occurred in the future.

In addition, even if the June 14 memo was an offer, Nguyen failed to "show evidence of funds," as required, by the July 7 deadline. According to Nguyen, on July 8 he gave Cataldo a one-page document dated May 18 from Trimark Funding, Inc., addressed "To whom it may concern" stating that "Hai D Nguyen been [*sic*] approved for 1,000,000 dollar line of credit to purchase investment property in California. We have based this on their credit history and income. Should you have any questions please feel free to call me at my number below." Even if we assume, as Nguyen claims, that Cataldo agreed to extend the deadline to July 8, the Trimark document could not have reasonably assured Cataldo that Nguyen had the funds to purchase the property. The document gave no firm commitment that Nguyen could use the line of credit to purchase this specific property. Furthermore, the document was dated May 18, and there was no way of knowing how much of the $1,000,000 in credit was still available nearly two months later, or even if the line of credit was still valid at all. Nguyen's failure to produce clear evidence of

available funds by the deadline means that he failed to meet one of the terms for purchasing the property.

B. *Attorney Fees*

The trial court awarded Cataldo $178,378.50 in contractual attorney fees, and K&C $97,278.50. Nguyen contends that the trial court erred because there was no valid contract on which attorney fees could be based. We agree with respect to K&C, which was never a party to the lease between Nguyen and Cataldo, and we accordingly reverse that portion of the attorney fee award. But we affirm the award of attorney fees to Cataldo. Because Nguyen would have been entitled to an award of attorney fees if he had successfully enforced a right of first refusal under the lease, Cataldo is entitled under Civil Code section 1717 to an award of attorney fees for successfully defending that action.[2]

Nguyen's argument on appeal represents a shift from the position he took before the trial court. In his complaint and again in his opposition to summary judgment, Nguyen claimed that the lease agreement with Cataldo was a valid contract and that it gave him a right of first refusal to purchase the property. Now, in the hope of avoiding the application of the attorney fee provision of the lease, he contends that because neither party signed the lease, the attorney fee provision was inoperative. We

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[2] Nguyen does not argue on appeal that the attorney fee award to Cataldo was excessive, nor does he contend that the trial court erred by failing to apportion the award between the attorney fees attributable to Cataldo's defense against Nguyen's claims based on the lease and fees incurred in other aspects of the case. Accordingly, we do not address these issues here.

need not decide whether the lease was a valid contract because Cataldo is entitled to attorney fees even if it was not.

Civil Code section 1717, subdivision (a) provides that "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." In other words, contractual attorney fees are reciprocal: Even if a contract by its own terms allows only one party to obtain attorney fees, under section 1717, the other party is eligible for attorney fees if it prevails. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 610–611.) In addition, if a party sues under a contract that would allow it to collect attorney fees, and the opposing party successfully demonstrates that the contract is invalid, the prevailing party is still entitled to contractual attorney fees under section 1717. (*Santisas v. Goodin*, *supra*, at p. 611.)

Nguyen argues that Cataldo is not entitled to attorney fees under this provision because neither party signed the lease. According to Nguyen, he would not " 'clearly be entitled to attorney's fees should he prevail in enforcing the contractual obligation against the defendant' " (*Sessions Payroll Management, Inc. v. Noble Construction Co.* (2000) 84 Cal.App.4th 671, 679), and Cataldo should not either. We disagree. In his complaint, Nguyen alleged that "[he] and . . . Cataldo had a contract that was partially written in the Lease Agreement and the June 14 Memo, partially memorialized in text messages, partially oral, and partially implied in the conduct of

the parties." He alleged that Cataldo breached the contract by refusing to sell the property to him. If Nguyen had succeeded in establishing that he had a valid right of first refusal under the lease, he would necessarily have had to show that the lease was a valid contract. Having accomplished this, he would be "the prevailing party" in a suit on the contract and entitled to "court costs and reasonable attorneys' fees." An award of attorney fees to Cataldo for successfully defending against the suit is in accordance with the purpose of section 1717. Courts have allowed attorney fees under section 1717 even in cases where the alleged contract was void *ab initio*. (*California-American Water Co. v. Marina Coast Water Dist.* (2017) 18 Cal.App.5th 571, 579.) We see no justification for an exception in cases in which a party first sues on the contract and when he fails to prove that the contract required the result he demands, argues that the contract was invalid for a lack of signatures.

Unlike Cataldo, K&C was not a party to the lease, nor a successor to or beneficiary of Cataldo. Nguyen's cause of action for quiet title against K&C was derivative of his claims against Cataldo, but it was not based on the lease. If Nguyen had prevailed on this claim, it is not at all clear that he would have been entitled to an award of attorney fees from K&C. Consequently, the trial court's order awarding attorney fees to K&C must be reversed.

DISPOSITION

The judgment of the trial court is affirmed.

The order awarding attorney fees as to respondent Cataldo is affirmed.

The order awarding attorney fees as to respondent K&C Plus Coco, LLC is reversed.

Respondent Cataldo is awarded his costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

BENDIX, J.

FEDERMAN, J.*

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* Judge of the San Luis Obispo County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.